

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL DISTRICT
LAKE COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,
ex rel LISA MADIGAN, Attorney General
of the State of Illinois, and *ex rel.*
MICHAEL J. WALLER, State's Attorney
for Lake County,

Plaintiff,

v.

EMCO CHEMICAL DISTRIBUTORS, INC.,
an Illinois corporation,

Defendant.

07 CH 2419

FILED

APR 20 2010

Angela A. Gifford
CIRCUIT CLERK

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and *ex rel.* MICHAEL J. WALLER, State's Attorney of Lake County, and the Illinois Environmental Protection Agency ("Illinois EPA"), and Defendant, EMCO CHEMICAL DISTRIBUTORS, INC. ("EMCO"), have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court's entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2006), and the

and Section 309.102(a) of the Pollution Control Board's regulations.

C. Non-Admission of Violations

The Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, the Defendant does not affirmatively admit the allegations of violation within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

II. APPLICABILITY

This Consent Order shall apply to and be binding upon the Plaintiff, the Illinois EPA and the Defendant, and any officer, director, agent, or employee of the Defendant, as well as any successors or assigns of the Defendant. The Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This Consent Order may be used against the Defendant in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

The Defendant shall notify each contractor to be retained to perform work required in this Consent Order of each of the requirements of this Consent Order relevant to the activities to be performed by that contractor, including all relevant work schedules and reporting deadlines, and shall provide a copy of this Consent Order to each contractor already retained no later than thirty (30)

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the parties to this Consent Order consenting hereto and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Penalty

The Defendant shall pay a civil penalty of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00). Payment shall be made in installments according to the following schedule:

a. One payment in the amount of \$35,000 shall be tendered in open court at the time of entry of the Consent Order. Payment shall be made by cashiers or certified check or money order payable to the Illinois EPA, or by wire transfer for deposit into the Environmental Protection Trust Fund ("EPTF"). The name, case number and the Defendant's Federal Employer Identification Number ("FEIN") shall appear on the face of the cashiers or certified check or money order; and

b. A second payment in the amount of \$5,000 shall also be made by cashiers or certified check or money order and tendered in open court at the time of entry of the Consent Order. The certified check or money order shall be made payable to the Lake County Treasurer/ Lake County State's Attorney.

c. Within 30 calendar days after entry of this Consent Order, a third payment in the amount of \$35,000 shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). The name, case number and the Defendant's Federal Employer Identification Number ("FEIN") shall appear on the faces of the

noncompliance with any provision of this Consent Order.

2. If the Defendant fails to make any payment required by this Consent Order on or before the date upon which the payment is due, the Defendant shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Defendant not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

4. Stipulated Penalty Payment Procedures - All stipulated penalty payments required by this Consent Order shall be made by cashiers or certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name, case number and the Defendant's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

alternatives and a schedule for selection and implementation of improvements, if they are needed, to meet the effluent limitations.

3. Stormwater Discharge Monitoring and Interim Discharge Limits - Until such time as the Illinois EPA issues Defendant a site specific NPDES permit for stormwater discharges from its facility, Defendant shall sample stormwater discharges from its facility for the following constituents: methylene chloride; vinyl chloride; mercury; toluene; Bis (2-ethylhexyl) phthalate; Di-n-butyl phthalate; ethylbenzene; total xylenes; trans-1, 2-dichloroethene; and trichloroethene.

Grab samples shall be collected from the discharge resulting from a rainfall event that is greater than 0.1 inches in magnitude or equivalent snow melt and occurs at least 72 hours from the previous measureable (greater than 0.1 inch rainfall or equivalent snow melt) storm event. Any additional sampling performed by Defendant or any agent or contractor of Defendant must also be included in the reporting described below. No more than 2 (two) such samples must be collected and analyzed by Defendant during a given month. In addition, grab samples shall be taken of all spills involving a reportable quantity of any chemical. During this period, stormwater discharges from Defendant's facility shall not exceed the following concentrations, expressed in micrograms per liter ("µg/l"):

<u>Contaminant</u>	<u>Standard</u>
Methylene chloride	2,600.0
Bis (2-ethylhexyl) phthalate	76.0
Trans-1,2-dichloroethene	34,000.0
Di-n-butyl phthalate	170.0
Trichloroethene	370.0
Mercury (total)	1.7
Ethylbenzene	150.0

Fifth month and each additional month reporting at least one violation- \$500.00

Stipulated penalties for any violations of the interim discharge limits listed above shall be made in accordance with the terms and conditions set forth in Section III.B of this Consent Order.

6. In addition to any other authorities, the Illinois EPA, its employees and representatives, the Attorney General, her employees and representatives, and the Lake County State's Attorney and his employees and representatives, shall have the right of entry into and upon the Defendant's facility which is the subject of this Consent Order, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, the Attorney General, her employees and representatives, and the Lake County State's Attorney and his employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

7. This Consent Order in no way affects the responsibilities of the Defendant to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

8. The Defendant shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

D. *Force Majeure*

1. *Force majeure* is an event arising solely beyond the control of the Defendant, which prevents the timely performance of any of the requirements of this Consent Order and shall include, but is not limited to, events such as floods, fires, tornadoes, other natural disasters, and labor disputes beyond the reasonable control of the Defendant. An increase in costs associated with implementing

petition. The burden of proof of establishing that a *force majeure* event prevented the timely performance shall be upon the Defendant. If this Court determines that the delay or impediment to performance has been or will be caused by circumstances solely beyond the control of the Defendant and that the Defendant could not have prevented the delay by the exercise of due diligence, the Defendant shall be excused as to that event (including any imposition of stipulated penalties), for all requirements affected by the delay, for a period of time equivalent to the delay or such other period as may be determined by this Court.

E. Enforcement and Modification of Consent Order

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by Plaintiff or Defendant for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. The Defendant agrees that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The parties to this Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the designated representatives. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party to this Consent Order, for filing and incorporation by reference into this Consent Order.

the delay in the work that occurred as a result of dispute resolution.

3. In the event that the parties to the Consent Order are unable to reach agreement during the informal negotiation period, the Plaintiff and the Illinois EPA shall provide the Defendant with a written summary of its position regarding the dispute. The position advanced by the Plaintiff and the Illinois EPA shall be considered binding unless, within twenty (20) calendar days of the Defendant's receipt of the written summary of the Plaintiff's and the Illinois EPA's position, the Defendant files a petition with this Court seeking judicial resolution of the dispute. The Plaintiff shall respond to the petition by filing the administrative record of the dispute and any argument responsive to the petition within twenty (20) calendar days of service of Defendant's petition. The administrative record of the dispute shall include the written notice of the dispute, any responsive submittals, the Plaintiff's and the Illinois EPA's written summary of its position, the Defendant's petition before the Court and the Plaintiff's and the Illinois EPA's response to the petition. The Plaintiff's and the Illinois EPA's position shall be affirmed unless, based upon the administrative record, it is against the manifest weight of the evidence.

G. Notice and Submittals

Except for payments, the submittal of any notice, reports or other documents required under this Consent Order, shall be delivered to the following designated representatives:

As to the Plaintiff

George D. Theophilos
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Flr
Chicago, Illinois 60602

Lisle A. Stalter
Assistant State's Attorney
Lake County State's Attorney Office
18 N. County St.
Waukegan, IL 60085

- c. liability for natural resources damage arising out of the alleged violations; and
- d. the Defendant's failure to satisfy the requirements of this Consent Order.

Nothing in this Consent Order is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), other than the Defendant.

I. Execution and Entry of Consent Order

This Order shall become effective only when executed by all parties to the Consent Order and the Court. This Order may be executed by the parties to the Consent Order in one or more counterparts, all of which taken together shall constitute one and the same instrument. The undersigned representatives for each party to the Consent Order certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

WHEREFORE, the parties to the Consent Order, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

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